

Risk Management Group ISSUE REPORT



DR & AJU Risk Management Group (the “**RMG**”) observes the latest updates on the U.S. government’s trade, commerce, or legal policies with the purpose of preventing the corporate risks of Korean companies, or companies in Korea that may be affected by the U.S. policies. For further information on DR & AJU’s RMG profile and its members, please see the last page of this issue report.

U.S. Government’s Policy Updates

Policies for Reorganizing a U.S. Centered Global Supply Chain Part 2 – The Buy America Policy

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Policies for Reorganizing a U.S. Centered Global Supply Chain Part 2 – The Buy America Policy

Significance

The Buy America policy refers to the comprehensive laws and regulations that oblige the use of U.S.-produced materials and equipment when constructing and rebuilding roads, bridges, railroads, and ports. This policy aims to reduce previous reliance on Chinese suppliers and shift to a U.S.-oriented supply chain, thereby dealing an economic blow to China and strengthening the production capacity of the U.S.

This policy is in line with the government tendencies of the Biden administration, which has proposed various policies and bills to decrease dependence on countries like China and Russia in the supply chain and reshape the world's economic order based on the U.S., which is expected to have a significant impact on countries that export goods to the U.S., including Korea.

This RMG issue report will examine the details of the Buy America policy.

Background and Related Laws

In the first week after its inauguration in January 2021, the Biden administration signed into law Executive Order 14005 on Ensuring the Future Is Made in All of America by All of America's Workers, which mandates the purchase, production, and manufacturing of U.S. goods, products, and services, and employment within the U.S. This policy is a measure to implement the "Buy America Plan" that President Biden pledged during the presidential election and is aimed at i) strengthening the criteria and preferential conditions for recognition of domestic products and reinforcing the requirements for allowing foreign procurement; ii) establishing a management system for exceptions to the Buy America policy; and iii) increasing transparency in federal procurement procedures.

Specifically, in regards to the Buy America policy, the "Made in All of America" Executive Order establishes a Made-in-America Office (the "**MIAO**") within the Office of Management and Budget (the "**OMB**"). In addition, the Executive Order removes IT goods from the exceptions to the Buy America policy, which means these goods are no longer allowed to be freely produced with component parts manufactured in other countries.

To achieve the goals stipulated in the Executive Order, the Biden administration established the MIAO on January 25, 2021, which manages waiver requests across federal agencies. In addition, the Administration announced policy guidelines for the Buy America policy three times in June 2021, December 2021, and April 2022, regulating the scope of policy application, policy enforcement plan, the waiver application process, etc. The requirements and verification process for domestic content were reinforced after the Amendment to the Federal Acquisition Regulation (the "**FAR**") took effect on October 25, 2022.

On May 14, 2022, the U.S. government enacted the Infrastructure Investment and Jobs Act, which calls for 1.2 trillion USD of investment for infrastructure development and job creation, including the "Buy America Sourcing Requirements," which includes the mandatory purchase of domestic products in public infrastructure projects.

In the State of the Union Address on February 7, 2023, President Biden announced “new standards to require all construction materials used in federal infrastructure projects to be made in America,” and revised the OMB guidelines on February 9. After President Biden’s speech, experts expect major infrastructure ministries to tighten regulations under the Buy America policy.

This report will address the establishment and exemption system of the MIAO and the Buy America policy for major industrial sectors in turn, with the specifics of each current policy.

Establishment of the MIAO and Strict Management of Waiver Application

The MIAO aims to strengthen U.S. domestic supply chains and determine the exceptions to the obligation to Made in America Laws¹ (the “**waiver**”). The U.S. government is taking various measures to manage waiver requests for each federal procurement agency through the MIAO. The measures are as follows:

- ① The waiver application information will be standardized and collectively managed by the MIAO. Specifically, each federal procurement agency must submit its waiver request along with justification to the MIAO for review. In addition, the U.S. General Services Administration will operate its own website where it reports on the implementation status of Made in America Laws for each agency by publicly disclosing the determination of each agency’s waiver request and the details and reasons thereof.
- ② Each procurement agency will designate a person in charge of purchasing domestic products, communicating with the MIAO, and submitting a report on the Made in America policy twice a year to comply with the Buy America policy.
- ③ The MIAO provides market intelligence and product category analysis for industries with the most waivers due to the lack of domestic sources. Analysis results will be delivered to each procurement agency and used to establish long-term procurement plans and reduce exemptions.

1 Made in America Laws include all acts, regulations, rules, and executive orders relating to federally funded infrastructure projects. This includes the Buy American Act (BAA, enacted in 1933), the Berry Amendment (1941), the Kissell Amendment (2013), the Jones Act (1920), the Cargo Preference Acts of 1904 and 1934, etc.

Standards for Application to Major Industry Sectors

For the **charging infrastructure of electric vehicles (“EV”)**, the Federal Highway Administration issued implementation guidelines on February 15, 2023, for (i) the installation, operation, and maintenance of EV charging stations, and (ii) the Buy America requirements in the Infrastructure Investment and Jobs Act. According to the proposals and guidelines, chargers manufactured before July 1, 2024, are immediately subject to the "obligation of domestic assembly and production," and chargers manufactured after July 1, 2024, are subject to domestic production obligations for 55% or more of the component part costs. The above guidelines will take effect within 30 days of publication in the official gazette, and public comment can be submitted through the website of the Federal Expressway Office within five days of publication in the official gazette.

Regarding **construction materials**, the OMB issued guidelines on February 8, 2023, to ensure the smooth implementation of the Buy America policy in all federally funded infrastructure projects. Under the guidelines, federally funded infrastructure projects must provide benefits to domestic products for all construction materials, such as non-ferrous metals, plastic and polymer-based products, composite building materials, glass, fiber-optic cables, lumber, and dry walls.

As for **telecommunications equipment**, the National Telecommunications and Information Administration has previously proposed exemptions from the Buy America policies for certain wide-area network construction projects. However, following President Biden's recent speech, it conducted a self-assessment and announced that products such as fiber optic cables will not be excepted from the policy.

DR & AJU's Comments

As of now, the Biden administration is committed to implementing the Buy America policy, and related ministries are actively enforcing procedures in strict accordance with the policy. Therefore, exporting companies in major industries targeted by the Buy America policy, such as electric vehicles, construction, and telecommunications, should thoroughly examine whether the policy is applicable to their situation and proactively assess the impact it might have on their exports. Furthermore, businesses must actively respond and prepare countermeasures to avoid suffering losses from the consequences of the Buy America policy, such as the cancellation of bidding contracts and excessive administrative expenses accrued for procurement requirements.

Additionally, as Korea has Government Procurement Agreement in place with the U.S., Korea is relatively well-positioned in comparison to countries without such agreements, such as China. Therefore, it is expected that Korean companies will need to strategize to enhance its competitiveness against Chinese products and to plan for localization strategies to succeed in the U.S.

The Buy America policy is based on various laws, guidelines, and administrative rules. Since revisions are being made to related statutes and regulations at a fast pace, cooperation with specialized institutions is essential for Korean exporters. DR & AJU's Washington, D.C. Liaison Office and [D&A Advisory, Inc.](#) provide services that deliver accurate and crucial information and help establish effective response strategies to companies operating in the U.S.

DR & AJU will continue to closely monitor updates of the U.S. Congress and government policies on the Buy America policy in order to respond expeditiously through close cooperation with businesses when necessary.

RMG Introduction

DR & AJU's Risk Management Group (the "**RMG**") is founded with the purpose to prevent and minimize corporate risks for companies in Korea. RMG's goal is to create a favorable business environment by providing strategic solutions to prevent, manage, and minimize various risks a corporate entity may face doing business domestically or globally.

DR & AJU RMG provides various risk management services from pre-transaction investigation, strategic research, field investigation, to review of a potential dispute, monitoring, and representing in litigations and post-litigation follow-up work. Furthermore, RMG aims to be a strategic partner to our clients in their creative management by predicting and preparing political and regulatory risks due to changes in global dynamics or political landscape that our clients may face in or out of Korea.

DR & AJU RMG team is comprised of experienced lawyers of various backgrounds, including the prosecution, police, politicians, administration officials, military generals and intelligence officers, national security authorities, North Korea experts, investigators, computer forensics experts, and financial and media experts.



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